

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

SEAN E. McMAHON,

Plaintiff,  
vs.

5:10-CV-1063  
(NAM/GHL)

OFFICER CARNS, BRENDAN COPE, OFFICER  
FURA, OFFICER NOVITSKY, OFFICER PATTI,  
OFFICER SUMMERS, OFFICER TASSINI and  
CITY OF SYRACUSE,

Defendants.

APPEARANCES:

Meggesto Crossett & Valerino, L.L.P  
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Syracuse, New York 13203  
*Attorneys for Plaintiff*

Juanita Perez Williams, Esq.  
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*Attorneys for Defendants*

OF COUNSEL:

James A. Meggesto, Esq.  
James P. McGinty, Esq.  
Asst. Corporation Counsel

**Norman A. Mordue, Chief U.S. District Judge**

**MEMORANDUM-DECISION and ORDER**

**I. INTRODUCTION**

Plaintiff filed the instant lawsuit following an incident involving various officers of the Syracuse Police Department in June 2009. Plaintiff asserts that he was standing with a group of friends on a street corner in the City of Syracuse when they were approached by a number of police officers on the basis that they were in violation of a City ordinance which regulates and prohibits the gathering of crowds on City sidewalks. When plaintiff attempted to leave, he claims he was chased by two officers and detained. After he was under police control, plaintiff asserts that he was punched in the face and fell to the ground, hitting his head on the pavement. Once he

was on the ground, plaintiff alleges that two officers repeatedly punched and kicked him and then forcefully put his hands behind his back and handcuffed him. Plaintiff's complaint alleges various violations of his civil rights by the police officers and the defendant City pursuant to 42 U.S.C. § 1983, false imprisonment, assault, negligence, and the constitutionality of the City of Syracuse "Disorderly Crowds" ordinance. The City has moved for dismissal of the various claims against individual officers and dismissal of the entire complaint pursuant to Fed. R. Civ. P. 12 (b) (6). Plaintiff opposes said motion except to the extent that plaintiff consents to the dismissal of defendants Carns, Cope, Novitsky and Tassini.<sup>1</sup>

## II. DISCUSSION

### A. Conclusory Allegations and Failure to Support § 1983 Claim with Substantive Law

First, defendants allege that the allegations in plaintiff's complaint are conclusory and insufficient to withstand a motion to dismiss. Defendants also contend that the complaint fails to assert which substantive federal or constitutional law is at the core of plaintiff's 42 U.S.C. § 1983 claim. The Court questions whether counsel for defendants actually read the complaint prior to filing the instant motion. There is nothing conclusory or insufficient about plaintiff alleging that he was "punched in the face [by defendant Fura] ... causing [him] to fall to his stomach ... and hit his head on the pavement." Moreover, the allegation that defendant Summers "struck him near his left eyebrow" while he was "lying facedown" is equally non-conclusory. As a further matter, the complaint states plainly at Paragraph 14 that the acts of defendants were a violation of plaintiff's rights "under the Fourth and Fourteenth Amendments to the United States Constitution." Based thereupon, defendants' motion to dismiss based on the alleged conclusory nature of the complaint and failure to support specifically the claim under 42 U.S.C. § 1983 must be denied.

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<sup>1</sup> In addition, the Court observes that plaintiff consents to dismissal of all claims against Officer "Murphy" who is not named as a defendant in this action. However, it is also notable that defendants requested that all claims against Officer "Murphy" be dismissed.

B. Official Capacity of Defendant Officers

Defendants argue that state officers are not amenable to suits for damages under 42 U.S.C. § 1983. Review of the complaint, however, reveals that the defendant officers are in each instance named in their individual capacities. Consequently, there is no basis for dismissing the claims against the defendant officers based on their status as state officials.

III. CONCLUSION

Based on the foregoing, it is therefore

ORDERED that defendants' motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12 (b) (6) is DENIED except to the extent that the claims against defendants Carns, Cope, Novitsky and Tassini are dismissed in their entirety with prejudice.

IT IS SO ORDERED.

Date: May 17, 2011  
Syracuse, New York



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Norman A. Mordue  
Chief United States District Court Judge